



UTAH'S DBE Newsletter

DBE PROGRAM

Upcoming Events:

November 4, 2004

TWO FREE DBE SEMINAR'S **LUNCH INCLUDED!**

Place: **UDOT**

Address: 4501 S. 2700 W., Taylorsville,

Morning: 1st Floor Main Conf. Room

Afternoon: 4th Floor Const. Conf. Rm.

Time: 9:30 AM—3:00 PM

(Parking available on the North side of the building. I.D. will be required to enter the building)

RSVP: Beverly Crawford 965-4100 or
e-mail bcrawford@utah.gov

(9:30—11:30 AM)

LEADERSHIP vs MANAGEMENT

- Learn the difference between being a Manager and being a Leader.
- Learn how to be both.
- Recognize opportunities for growth.
- Develop leadership talent and a permanent skill.

Seminar Leader: **Arnold S. Grundvig, Jr.**
Has a degree in psychology and a masters degree in business. He empowers entrepreneurs.

(1:00—3:00 PM) CONSTRUCTION PLAN READING

Learn how to read and understand:

- Standard Specifications
- Standard Plan Sheets
- Standard Drawings

Seminar Leader: **Larry Buss** has been with UDOT 36 years. He is currently a Deputy Construction Engineer.

October 28, 2004 (Tentatively)

UDOT Labor, EEO, DBE Training

8:30 AM at UDOT (4501 S. 2700 W., Taylorsville, 4th flr—Construction conference room).

Trainings are free of charge and are held periodically at UDOT (2-3 hours). Call Jane Casper, Labor Compliance Specialist (801) 965-4740 or Beverly Crawford,

E-MAIL ADDRESS

An e-mail address is essential for business in today's world!

The UUCP (Utah Unified Certification Program) would like to keep you informed of current events, bids, etc., by sending you e-mail updates.

PLEASE KEEP YOUR INFORMATION CURRENT.

To change your address, phone/fax or e-mail

address, contact any one of the following :

Beverly Crawford/Kathi Wilcox

UDOT (801) 965-4100

UDOT (801) 965-4102

Paul Marshall

SLCDA (801) 575-2945

Raymond Christy or

Suzann Hedberg

UTA (801) 287-3537

UTA (801) 287-3538

Special points of interest:

- *DBE Training Seminars and Workshops*
- *DBE Annual Goals (UDOT, SLCDA, UTA)*
- *SLCDA (Paul Marshall): Article on DBE Size Limits and SLCDA Bidding Opportunities*
- *UTA (Raymond Christy): UTA Commuter Rail and SL Intermodal Hub Bidding Opportunities*
- *UDOT (Beverly Crawford) Article on DBE Performs a Commercially Useful Function*

DBE ANNUAL GOALS FOR FEDERAL FISCAL YEAR 2005

UDOT:	SLCDA	UTA
APPROVED OVERALL GOAL: 8.9%	PROPOSED OVERALL GOAL: 8.0%	PROPOSED OVERALL GOAL: 8.69%
APPROVED RACE CON- SCIOUS PARTICIPATION: 5.0%	PROPOSED RACE CON- SCIOUS PARTICIPATION: 5.6%	PROPOSED RACE CON- SCIOUS PARTICIPATION: 6.0%
APPROVED RACE NEUTRAL PARTICIPATION: 3.9%	PROPOSED RACE NEUTRAL PARTICIPATION: 2.4%	PROPOSED RACE NEUTRAL PARTICIPATION: 2.69%

Upcoming Events (Continued)

DBE Coordinator/Supportive Services
(801) 965-4100 to register.

October 25—27, 2004

**UDOT'S ENGINEERING CONFER-
ENCE** (held at the South Towne Expo-
sition Center, Sandy, Utah)

Registration information can be found
on the following web site: [http://
www.udot.utah.gov/index.php/m=c/
tid=949](http://www.udot.utah.gov/index.php/m=c/tid=949)

A great place to meet and mingle with
contractors and suppliers.

LOOKING AHEAD:

Salt Lake City Department of Airports
(SLCDA) and The Utah Department of
Transportation (UDOT) have scheduled
their annual DBE and Prime Contractor
Training Seminars for the following
dates (both are free of charge and will
be held at the Hilton, Salt Lake City
Airport location: 5151 Wiley Post
Way. (801) 539-1515).

RSVP: Paul Marshall (801) 575-2945
or paul.marshall@slcgov.com

Annual DBE Training: **January 12,
2005 from 8:00 am to 12:00 pm.**
Breakfast is included.

Annual Prime Contractor Training:
**January 26, 2005 from 8:00 am to
12:00 pm.** Breakfast is included.

BID ON UDOT PROJECTS

RECEIVE AUTOMATIC E-MAIL NO-
TIFICATIONS OF UDOT PROJECTS
THAT ARE BIDDING:

The following web site explains how to
sign up :

[http://www.udot.utah.gov/index.php/
m=c/tid=552](http://www.udot.utah.gov/index.php/m=c/tid=552)

The following web site is where you
sign up.

[http://listserv.dot.state.ut.us/scripts/
lyris.pl?join=bid_notices](http://listserv.dot.state.ut.us/scripts/lyris.pl?join=bid_notices)

The following web site is where the
UDOT projects are located:

[http://www.udot.utah.gov/index.php/
m=c/tid=317](http://www.udot.utah.gov/index.php/m=c/tid=317)

UDOT'S home page web address:

<http://www.udot.utah.gov/>



DBE SIZE LIMITS

ARTICLE WRITTEN BY PAUL MARSHALL, DBE LIAISON OFFICER, SLCD

Does your firm exceed the DBE program size limit? Let's take a minute to understand the established program limits and how they apply to applicant and certified firms. The DBE program regulation, 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in the Department of Transportation Financial Assistance Programs*, Section 26.65, states:

- (a) "To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. You must apply current SBA business size standard(s) found in 13 CFR Part 121.402, located at the following web site: http://www.access.gpo.gov/nara/cfr/waisidx_99/13cfr121_99.html appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.
- (b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$17,420 million. The Secretary adjusts this amount for inflation from time to time.

Please note that each paragraph above established an upper limit, which if either is exceeded will either prevent certification or result in graduating out of the DBE program. To further clarify, paragraph (a) above states: to be eligible, a firm must be a small business (for their industry) as defined by SBA regulations. The SBA uses North American Industrial Classification Standards (NAICS) codes to identify industries. The following web site is one of a select few you can use to look up NAICS codes: <http://www.sba.gov/size/sizetable2002.pdf>. A business concern, to be eligible for the DBE program, must not exceed the size standard for the NAICS code specified for their industry.

Paragraph (b) above states that regardless of the SBA small business size limit established for a particular industry in paragraph (a), a firm is not eligible for the DBE program if over the previous 3 years a firm has average annual gross receipts in excess of \$17.42 million. To become certified or to remain certified a firm must meet both conditions. Exceeding these limits may not be all bad. It could mean your business is doing well!

Now for a couple of examples:

1.) An Industrial Building Construction firm with a NAICS Code 236118, and 3 year average gross receipts of \$25.0 million, applies for DBE certification. The established SBA size limit, to be defined as small, is \$28.8 million. This firm meets the conditions of paragraph (a) above because it is within the SBA small business size standard (\$28.8 million) for that industry. However, this firm cannot be certified because it fails to comply with paragraph (b). The firm's 3-year average annual gross receipts of \$25.0 million exceed the program limit with average gross receipts of \$17.42 million.

2.) Please note that the first size eligibility criteria is established by paragraph (a) above. No firm can exceed the SBA size limit for its industry and remain in the DBE program. If a firm exceeded the SBA small business limit it would be graduated out of the DBE program or not allow to certify if it were applying for certification. Obviously this would apply to any firm with an SBA size limit less than \$17.42 million. For example, a design engineering firm (NAICS Code 541330) to be considered an SBA (and therefore DBE) small business can not exceed \$4 million in gross receipts averaged over 3 years and remain in the DBE program.

Airport concessions are not governed by SBA size standards. Airport concessions size limits are established in 49 CFR Part 23, *Participation by Disadvantaged Business Enterprises in Airport Concessions*. Appendix A to Subpart F of Part 23 establishes size standards for Airport Concessions. Maximum average annual gross receipts, in the preceding 3 years, are generally limited to \$30.0 million. Please note the word "generally" is used because concessions legislations list a few exceptions to the \$30.0 million limit. There are some concessions with limits less than \$30.0 million and at least on concession with a 3-year gross receipts limit greater than \$30.0 million. Refer to the Part 26 regulation for more details concerning concession size limits.

SALT LAKE CITY DEPARTMENT OF AIRPORTS BUSINESS OPPORTUNITIES (4th quarter):

The following projects and contracts scheduled to bid this quarter or early next quarter. This information is subject to change. Projects may be added, deleted, or modified at the sole discretion of Salt Lake City Department of Airports.

1. Project to **install electrical conduit and wire** for a new security screening checkpoint; scheduled to bid in December; for more information contact Dan Spader at 801-575-2900.
2. Project to **extend the main water loop** around the airport; scheduled to bid in December; for more information call the engineering office at 801-575-2900.
3. Project at SLC Municipal **Airport 2 to reconstruct parking apron**; scheduled to bid in December; for more information call the engineering office at 801-575-2900.
4. Project to **reconstruct taxiway Mike**; scheduled to bid in November; for more information call the engineering office at 801-575-2900.
5. Project to **rehabilitate apron joint seals**; scheduled to bid in November; for more information call the engineering office at 801-575-2900.
6. Project with 2 or possibly 3 contracts totaling \$40 million to **modify passenger terminals**; scheduled to bid next quarter; for more information contact Dan Spader at 801-575-2900.
7. A contract for **Airtime Costing** should be announced in October. Firms will be asked to provide a full featured computerized time clock. For more information contact Cole Hobbs at 801-575-2984.
8. A contract for **consulting services** should be announced in October. Firms will be asked to provide consulting services related to Public Address System/Closed Circuit TV system design and interoperability.
9. **Landside Road Reconfiguration - East**
This project will construct a new ground transportation staging area and complete the remaining economy parking lot and Rental Car Access (RAC) service sites. Paving will be completed on the terminal access roads and the RAC roads. A flyover bridge on imported fill and a pile foundation will also be constructed to allow vehicles to access the new ground transportation staging area; scheduled to bid in January; for more information contact the engineering office at 801-575-2900.
10. **Erosion Control and Landscaping**
This landscaping project is the forth project in a series of landside development projects and is associated with the new access roads and parking lots that will be constructed; scheduled to bid in January; for more information contact the engineering office at 801-575-2900.
11. **Ground Transportation Management System (GTMS)** This project will install a fully functional (GTMS) for commercial vehicles using Automated Vehicle Identification (AVI); scheduled bid date is February; for more information contact the engineering office at 801-575-2900.
12. **Airfield Lighting Control System (ALCS) Upgrade** This project will upgrade the Airport's (ALCS) to a windows based, Generation III control system; scheduled to bid in January; for more information contact the engineering office at 801-575-2900.



What's happening at UTA...

First of all, I invite you to **visit** UTA's DBE webpage, which is located at:

- <http://www.utabus.com/utaInfo/businessOpportunities/db/default.aspx>

at the bottom of the DBE webpage, lists upcoming bids / proposals / procurements at UTA. I recommend checking this page periodically, to get the latest information on upcoming projects or procurements.

What are the new projects at UTA?

Light Rail Transit

- 900 South Station. The design and construction of a 900 South Station on the Delta Center / Sandy Line. This is a 1.2 million project that will begin in December 2004.
- Light Rail Extension to the Salt Lake Intermodal Hub. The design and construction of an extension from the Delta Center to the new Salt Lake Intermodal Transportation Hub.

Commuter Rail

- The construction of a Commuter Rail system (\$220 million) from Salt Lake City to Weber County, which includes a 1200' bridge over the Ogden Rail Yard and Ogden River. Construction is projected to begin August 2005. It is projected that bid proposals packages will be released April / May 2004. Commuter Rail Constructors (CRC) are co-sponsoring DBE open houses on the upcoming construction project. The next DBE Open House is scheduled for Thursday, October 14, 2004 from 3:30 pm to 5:30 pm. In addition to the DBE Open House is a mini DBE workshop on "bonding". Two bonding company representatives will be on hand to discuss bonding, pitfalls and shortcuts. RSVP is due by Tuesday, October 12, 2004.
- The Warms Springs Maintenance Facility is in Phase III of it's refurbishing of the 25,000 square foot diesel locomotive facility.

Contact information:

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Disadvantaged Business Enterprise (DBE) Liaison Officer
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801-262-5626 ext. 3537, 801-287-4675 fax
Email: rchristy@uta.cog.ut.us

DBE COMMERCIALLY USEFUL FUNCTION (CUF) SPECIAL PROGRAM BULLETIN FROM U.S.DOT

Edited by: Beverly Crawford, UDOT DBE Coordinator

Of all of the many elements of DBE program there is one that can have the most detrimental impact on the ability of the prime contractor to meet its contract goal. This one element is commonly referred to as “CUF.” How can just one element of the program have such impact on the program achieving the results Congress conceived when it established the program?

Both the prime contractor and the STA (State Transportation Agency) receive credit toward the DBE goal (contract and overall annual goal) ONLY when a DBE working on a contract performs a commercially useful function. DBEs generally perform work of a contract either as a contractor, a trucker, a regular dealer or a manufacturer. While each of these categories are evaluated differently when determining whether the DBE has performed a CUF, there is one guiding principle that must be met. Under the terms established under 49 CRF 26.55, a DBE firm performs a CUF when it is:

“Responsible for execution of the work of the contract or a distinct element of the work by actually performing, managing and supervising the work involved.”

The question contract administrators often face is, “What are the management, supervision and performance actions of a DBE firm that satisfactorily meets this requirement and therein forms the basis for rendering a determination that a DBE has in fact performed a CUF? The one key reference point for any contract administrator and is essential for this evaluation process is having an effective description of the work to be performed by a DBE in a legally recognized document (i.e., subcontract).

There are actually a number of factors that should be considered in reaching this decision. The different indicators for each of the 4 categories are outlined in the subsequent sections. The following are some key factors USDOT has described in its DBE regulations. In reaching a determination of performing a CUF one should evaluate the amount of work subcontracted, whether it is consistent with normal industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and to be credited towards the goal. The regulations speak of when furnishing of materials a DBE is to be responsible for negotiating the price, for determining the quality and quantity of the material, paying for it and ordering the material. As a contractor a DBE firm would typically be contracted to furnish and install or just to install an item in the contract.

When looking at whether a DBE is actually performing the work themselves (page 5115 of the 1999 regulations) there are 5 distinct operations to be concerned with and they are: **MANAGEMENT, WORKFORCE, EQUIPMENT, MATERIALS AND PERFORMANCE**. Each of these operations must be evaluated in order to reach the ultimate decision that the DBE has in fact performed a CUF. In keeping with normal contract requirements it is the primary responsibility of the Prime Contractor to ensure that the DBE firm is performing a CUF. The STA as the contracting agency has a further oversight responsibility to ensure that the prime contractor has effectively met this responsibility under his/her contract with the STA. The most consistent thread through this evaluation is whether the role the DBE is playing in any transaction is consistent with “normal industry practice.” The concern here is that the normal industry practice is determined largely by non-DBE firms and is often simply a practice repeated often enough to set the normal industry practice. But if normal practices in fact erode the ability of the DBE to control its work and/or remain independent and in effect is inconsistent with the intent of the DBE program then requirements of Part 26 must prevail. One general rule of thumb that one can consider is whether a DBE firm would be performing in the manner it is if there was no DBE program and as further evidence of meeting normal industry practice does the DBE firm perform this work on non-federal work.

DBE Trucking Firms

The DBE Trucking Firm is only required to own and operate at least one fully licensed, insured, and operational truck used on the contract. On the other hand in performing a CUF, a DBE trucking firm must also be responsible for the management and supervision of the entire trucking operation on a contract-by-contract basis. There cannot be a contrived arrangement for the purpose of meeting DBE goals. So how can this be done when the DBE is only required to own and operate one truck?

The **DBE may lease trucks from another DBE firm**, including an owner operator who is certified as a DBE. The DBE may also lease trucks from a **non-DBE firm**, including from an owner-operator. The DBE who leases trucks **from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.**

The DBE may lease from an established equipment leasing business open to the general public. While this is the preferred approach, **if the lease does not indicate that the DBE has exclusive use of and control over the truck, one does not receive full credit.** This requirement does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, **so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE. The DBE trucker must also hold the necessary, where appropriate, license, hauling permit, etc., as required by the State to transport material on public highways.**

In order for the STA to monitor the performance of a DBE trucking firm, the work to be performed must be covered by a subcontract or written agreement approved by the STA prior to performing the work. **Additional documentation required when the DBE firm leases equipment** is a valid lease agreement to be provided to the STA for appropriate action. To be considered valid the lease agreement must include such items as the lessor's name, list of trucks to be leased by Vin number and the agreed upon amount of the cost and method of payment. It should be the responsibility of the DBE to provide the operator's, fuel, maintenance and insurance for all leased trucks.

DBE Regular Dealer

In order for a DBE firm to be deemed a regular dealer, it must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. In addition, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

A distinction must be made between a firm that supplies a product on a regular basis to the public and firms (not meeting the requirements) that supply a product on an ad hoc basis in relation to particular contract or contractor. This is important in distinguishing a regular dealer, which has a regular trade with a variety of customers, from a firm that performs supplier like functions on an ad hoc basis or for only one or two contractors with whom it has a special relationship. **One of the key considerations of being a regular, established dealer is the presence of an inventory of materials and/or supplies. Another key question is who assumes the actual and contractual responsibility for the provision of the material and/or supply?**

A firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.

DBE Manufacturers

As described in 26.55, **a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.**

Another valuable source for defining what constitutes a manufacturer is Webster's dictionary that defines a manufacturer as a process or operation carried out systematically with division of labor and the use of machinery for making any material product from raw material by forming, shaping, and altering it into a form suitable for use. Examples of such items could be a concrete ready mix plant, a crushing operation, fabricating plant either steel or concrete, etc.

DBE Contractor

DBE Contractor work is the most difficult and complex of all of the work a DBE might perform under a contract. For this reason and for the purpose of this document a detailed description of the do's and don'ts is presented.

Management

The DBE must manage the work that has been contracted. Management includes, but is not limited to: Scheduling work operations, ordering equipment and materials, preparing and submitting certified payrolls, hiring and firing employees.

The DBE owner must supervise daily operations, either personally or with a full time, skilled, and knowledgeable superintendent employed by and paid wages by the DBE. The Superintendent must be under the DBE owner's direct supervision. The DBE owner must make all operational and managerial decisions of the firm. Mere performance of administrative duties is not supervision of daily operations.

Equipment

A DBE Contractor firm may lease specialized equipment from another contractor, excluding the prime, if it is consistent with industry practices and at rates competitive for the area. A rental agreement must specify the terms of the agreement. The lease must be for a short period of time and involve a specialized piece of equipment readily available at the job site. The DBE must have full control of the operation of the equipment.

The DBE is expected to provide the operator for non-specialized equipment and is responsible for all payroll and labor compliance requirements. A separate lease agreement is required. A lease agreement should be approved by the STA prior to the DBE starting the work.

Workforce

In order to be considered an independent business, **DBE firms must keep a regular workforce.** DBE firms cannot "share" employees with non-DBE contractors, particularly the prime contractor. The DBE shall perform its work with employees normally employed by and under the DBEs control. All work must be performed with a workforce the DBE firm controls, with a minimum of 30% of the work to be performed by the DBE firm's regular employees, or those hired by the DBE firm for the project from a source other than the prime contractor. The DBE in all instances must have direct supervision of all employees. This arrangement should be approved by the STA prior to commencing the work of the contract.

The DBE firm must be responsible for all payroll and labor compliance requirements for all employees performing on the contract and is expected to prepare and finance the payrolls. Direct or indirect payments by any other contractor will not be allowed.

Materials

The DBE must negotiate the cost, arrange delivery and pay for the materials and supplies for the project. The DBE must prepare the estimate, quantity of material, and be responsible for the quality of materials. Invoices for material should show the payee to be the DBE.

The DBE must assume the actual and contractual responsibility for the provision of the material to be incorporated into the item of work being performed by the DBE.

Performance

The DBE must be responsible for the performance, management and supervision of a distinct element of the work, in accordance with normal industry practice (except where such practices are inconsistent with the DBE regulations and these guidelines). The DBE cannot perform work outside of the DBEs known experience or capability (what the DBE is certified to do).



(PUBLISHED BY: UDOT & SLCDA)

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UUCP DBE Directory on the Web!

[http://www.udot.utah.gov/download.php/
tid=198/uucp_dbe_directory.pdf](http://www.udot.utah.gov/download.php/tid=198/uucp_dbe_directory.pdf)